

ARKANSAS SUPREME COURT

No. CR 06-612

NOT DESIGNATED FOR PUBLICATION

DAVID CARROLL GOODWIN
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered December 14, 2006

PRO SE MOTION FOR
RECONSIDERATION OF DENIAL OF
LEAVE TO FILE SUPPLEMENTAL
BRIEF AND MOTION TO PROCEED
IN FORMA PAUPERIS [CIRCUIT
COURT OF SEBASTIAN COUNTY, CR
2003-581, HON. NORMAN
WILKINSON, JUDGE]

MOTION DENIED.

PER CURIAM

A jury found appellant David Carroll Goodwin guilty of manufacturing methamphetamine, possession of methamphetamine with intent to deliver, and felon in possession of a firearm, and sentenced him, as an habitual offender, to an aggregate term of 240 months' imprisonment in the Arkansas Department of Correction. The Arkansas Court of Appeals affirmed the judgment. *Goodwin v. State*, CACR 04-851 (Ark. App. June 15, 2005). Appellant timely filed in the trial court a petition for postconviction relief under Ark. R. Crim. P. 37.1, which was denied. Counsel representing appellant lodged an appeal of that order in this court, and appellant filed a *pro se* motion seeking permission to file a *pro se* supplemental brief on points raised in his petition but not argued by counsel on appeal. We denied that motion. *Goodwin v. State*, CR 06-612 (Ark. Oct. 26, 2006) (*per curiam*). Now before us is appellant's motion requesting that this court reconsider our decision on that motion.

In his motion for reconsideration, appellant makes the conclusory assertion that this court has ignored existing case law with respect to permitting an appellant to supplement a brief filed by counsel, without indication as to what authority it is that he believes we have overlooked. While appellant contends he has clearly shown counsel's brief is lacking, we do not agree. Appellant substantially attempts only to argue that the points he wishes to present have merit and, as a consequence, counsel's brief must therefore be deficient.

Appellant makes numerous references to a pleading not accepted by this court, one filed in response to the State's response to his motion, when our rules do not provide for further pleadings subsequent to the State's response. He contends that this pleading clearly detailed the deficiencies in counsel's brief. It does not, again merely attempting to have this court address the additional arguments that appellant would raise in addition to those raised by counsel. As we previously stated, a brief will not be held deficient merely because the appellant is dissatisfied with the arguments made or the issues raised. *Dokes v. State*, 299 Ark. 178, 772 S.W.2d 583 (1989) (*per curiam*).

Appellant contends that counsel's brief is deficient because it does not argue that there was sufficient evidence to support the charge of felon in possession of a firearm. Sufficiency of the evidence is not cognizable in a petition for relief under Rule 37.1, as we do not permit an appellant to rechallenge the sufficiency of the evidence at trial in a postconviction proceeding. *Johnson v. State*, 321 Ark. 117, 900 S.W.2d 940 (1995). Counsel's brief is not therefore deficient for failing to raise such an argument.

Appellant appears to contend counsel's brief is deficient for failure to argue that trial counsel failed to call certain witnesses, yet counsel does present argument concerning that issue. Appellant also contends counsel's brief does not present "all habeas corpus issues." However, this appeal is

from an order denying relief under Rule 37.1, not from an order denying a petition for writ of *habeas corpus*.

As we noted in our previous decision, appellant does not request that his attorney be relieved so that he may be permitted to proceed *pro se*. An appellant is not entitled to accept appointment of counsel to represent him, and also proceed *pro se*. *Hamilton v. State*, 348 Ark. 532, 74 S.W.3d 615 (2002). This court will not permit an appellant to compete with his attorney to be heard in an appeal. *Franklin v. State*, 327 Ark. 537, 939 S.W.2d 836 (1997) (*per curiam*); *see also Monts v. Lessenberry*, 305 Ark. 202, 806 S.W.2d 379 (1991) (*per curiam*). As appellant has again failed to show any deficiency in the brief or other reason to reconsider our previous decision, his motion is denied.

Motion denied.